How Medical Device Companies Respond to FDA Enforcement Actions

RESULTS OF UL’S 2013 REMEDIATION SURVEY
Executive Summary:

More than 88% of Medical Device companies agreed that the act of responding to an FDA 483 or Warning Letter would help prevent future enforcement actions, according to a 2013 UL survey focused on FDA remediation. This survey was conducted among more than 250 companies, including over 100 who had noted that they had been inspected by the FDA, revealing how companies are targeting resources to conduct FDA remediation, and whether the remediation process was helpful in preparing an organization for future inspections.

The results of this survey should provide insight into the current state of FDA remediation among Medical Device companies, and help Quality Assurance (QA) and Regulatory Affairs (RA) Directors decide whether to use third parties when responding to an FDA finding.
The State of Medical Device Inspection Readiness

In 2012, the CDRH within the US FDA issued more than 4,000 483s to Medical Device companies, and 210 Warning Letters. Further, the CDRH reported that companies recalled 2,475 products in 2012. While all indications point to a slight decline in these numbers in 2013, the 2012 data suggests that many Life Science companies must prepare for, and respond to, FDA facility inspections.

Purpose of the FDA Remediation Survey

Because UL’s Health Sciences division provides the CDRH remediation services to Medical Device companies, our team wanted to better understand the current methods and resources employed by companies to respond to an FDA Warning Letter or 483. From July to September 2013, UL conducted an online survey of more than 250 US-based Life Science companies, of which 75% had experienced an FDA inspection at one or more facility.
Here is a quick summary of the respondents:

- 34% of the Medical Device companies had 1,000 employees or more;
- 77% of respondents produce Class I and/or Class II devices;
- 75% of participants were Quality, Regulatory or Compliance executives, directors, or managers;
- 67% of respondents were in the Cardiovascular, Electromedical, and Implantable Device sectors.

75% of respondents indicated that they had been inspected by FDA, and 30% of those indicated the inspection occurred within the past two years. Consistent with the FDA’s own statistics about the nature of the findings, both CAPA and Complaint Management topics were cited most often.

Another finding that 10 participants entered directly into the “other” category was “design controls.” This is not surprising, as FDA has repeatedly told industry that design is the beginning of the device product lifecycle, and when the product reaches the market, CAPA serves as the feedback loop that improves risk assessments and drives design improvement.

In addition, we have seen in Warning Letters that FDA frequently cites Medical Device manufacturers for failure to internally investigate and correct root causes. Citations include lack of “thorough” investigation, a failure to establish and implement procedures for CAPA, and failure within CAPA procedures to analyze all sources of quality data and identify all possible existing and potential causes of quality problems.
In the survey, 74% of participants indicated that they had agreed with the FDA's findings. Some participants expanded on this answer and noted that the firm didn’t agree with “all” of the Agency's findings, but that the company would address the issues to resolve the disagreements.

When it came to the work of remediation, the internal team consisted primarily of QA and RA teams, but other resources were noted as well, primarily outside counsel, manufacturing managers, R&D staff and design control teams.

As far as the FDA enforcement action that was initiated, nearly 59% of the respondents stated they received a 483 from FDA, while 31% of the respondents indicated they received a Warning Letter.

Importantly, we asked respondents “If the FDA comes in for an inspection within the next 2 years, how prepared is your company?” Nearly 88% of the respondents answered that they were better prepared across all global facilities, or at least well prepared, with some divisions still at risk.

**FDA Remediation: Sources Used (Law Firms, Third Party Consultants)**

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**What was the highest FDA Enforcement Action?**

<table>
<thead>
<tr>
<th>Action</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Form 483</td>
<td>58.7%</td>
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<tr>
<td>Warning Letter</td>
<td>30.8%</td>
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<tr>
<td>Consent Decree</td>
<td>6.7%</td>
</tr>
<tr>
<td>Recall</td>
<td>1.9%</td>
</tr>
<tr>
<td>Injunction</td>
<td>1.0%</td>
</tr>
<tr>
<td>Seizure</td>
<td>1.0%</td>
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</table>

**If the FDA comes in for an inspection within the next 2 years, how prepared is your company?**

<table>
<thead>
<tr>
<th>Preparedness Category</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Well prepared – All global facilities have been subject to an independent mock audit with little to no findings</td>
<td>45.2%</td>
</tr>
<tr>
<td>Prepared – Some sites and/or divisions are at risk</td>
<td>42.3%</td>
</tr>
<tr>
<td>Not very well prepared</td>
<td>6.7%</td>
</tr>
<tr>
<td>Unprepared – We have never had a mock FDA audit</td>
<td>1.0%</td>
</tr>
<tr>
<td>Unsure</td>
<td>1.0%</td>
</tr>
</tbody>
</table>
In terms of outside resources used, nearly 43% of respondents indicated they had used a subcontractor or independent third party to perform remediation.

Among the comments related to this decision to use an outside consultant was this remark: “It helped to bring in an ‘outside’ perspective to get better buy-in from upper management.”

Another revealing comment was: “at some locations we have used a third party, while others do not need outside consulting.” Respondents were asked why they chose a third party, and the number one reason selected was, “Needed quick resolution and dedicated resources.” Given the need for expertise at a moment’s notice, it’s understandable that in-house experts may not be available during the remediation phase.

The most cited reason for choosing a third party consultant over another was “consultant/company expertise.” Among respondents’ comments that underscore this issue was the individual who stressed that “reputation with FDA and proven experience” was the most significant qualification.

For those that did hire a third party consultant, 77% were either very satisfied or satisfied with the third party’s performance. Some of the key positive comments regarding the third party were “independent opinion, experience, mock audit, and offered suggested areas of focus to avoid future inspection issues.” When we asked in the survey what remedial actions would help best prevent any future FDA enforcement action, the activity that received the highest rank was “Mock Audit by independent third party,” again, which suggests the potential value of using Independent Third Party expertise and tapping into the best practices derived from a team of outside experts that have audited multiple FDA-regulated organizations.

One of the key negative comments of the third party was, “Disorganized, did not provide the level of expertise they promised.”

More than 60% of respondents indicated that they relied on their internal resources rather than use an outside law firm.
Summary:
Among the Medical Device professionals who participated in this survey, many agree that resolving an FDA inspection can lead to preventive measures that can reduce the risk from future investigations. One key best practice, based on the 43% of respondents who sought expertise from outside of the organization, has to do with the level of expertise involved in the remediation.

As one respondent noted, “We will contract with the resource most appropriate to address the issue at hand.” Whether that resource is in-house or an outside third party, having experience with FDA inspections, combined with industry and regulatory knowledge, is central to resolving FDA inspections and “making sure the organization learns from the enforcement action through improved processes and procedures.”
About UL Health Sciences

UL provides comprehensive services to support medical and IVD companies with global regulatory submissions. Our local services include integrated systems registrations for ISO 13485, Canada CMDCAS, European Notified Body, Japan – PAL, Brazil – INMETRO and Risk Management ISO 14971. Our experienced engineers provide safety assessments to IEC 60601, IEC 61010, Home-Healthcare and CB Scheme. Our Human Factors Engineering experts provide design support and validation testing. Our team can also support your Regulatory and Learning Management Systems through ComplianceWire®, online and in person Training. UL also conducts non-clinical tests including sterility, shelf-life and packaging validation and biocompatibility. Find out more: www.ul.com/medical.

About UL EduNeering

UL EduNeering is a business line within UL Life & Health’s Business Unit. UL is a global independent safety science company offering expertise across five key strategic businesses: Life & Health, Product Safety, Environment, Verification Services and Enterprise Services.

UL EduNeering develops technology-driven solutions to help organizations mitigate risks, improve business performance and establish qualification and training programs through a proprietary, cloud-based platform, ComplianceWire®.

For more than 30 years, UL has served corporate and government customers in the Life Science, Health Care, Energy and Industrial sectors. Our global quality and compliance management approach integrates ComplianceWire, training content and advisory services, enabling clients to align learning strategies with their quality and compliance objectives.

Since 1999, under a unique partnership with the FDA’s Office of Regulatory Affairs (ORA), UL has provided the online training, documentation tracking and 21 CFR Part 11-validated platform for ORA-U, the FDA’s virtual university. Additionally, UL maintains exclusive partnerships with leading regulatory and industry trade organizations, including AdvaMed, the Drug Information Association, the Personal Care Products Council and the Duke Clinical Research Institute.